

AF 1632



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of: Needleman & Glenn
Serial No.: 09/386,591
Filed: August 31, 1999
Entitled: AN IMMUNOLOGICAL PROCESS AND
CONSTRUCTS FOR INCREASING THE HDL
CHOLESTEROL CONCENTRATION BY DNA
VACCINATION

ART UNIT: 1632
EXAMINER: A. Wehbé

Attorney Docket No.: AVA-432.1 US-1

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

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TRANSMITTAL LETTER

Sir:

Transmitted herewith are: [X] Express Abandonment under 37 C.F.R. §1.138; [X] a return receipt postcard, for filing in the above-captioned patent application.

PAYMENT OF NECESSARY FEES

[X] The Commissioner is hereby authorized to charge payment of any additional fees required under 37 CFR 1.16 or 1.17 in connection with the paper(s) transmitted herewith, or to credit any overpayment of same, to Deposit Account No. 50-0268. A duplicate of this transmittal letter is transmitted herewith.

Respectfully submitted,

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CERTIFICATE OF MAILING

The undersigned hereby certifies that this correspondence is being deposited with the U.S. Postal Service as First Class mail in an envelope addressed to **Mail Stop AF**, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date indicated below.

8/11/2003
date

Leon R Yankwich



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**EXPRESS ABANDONMENT OF PENDING APPLICATION
PURSUANT TO 37 C.F.R. §1.138**

Dear Sir:

Pursuant to 37 C.F.R. §1.138 Applicants submit this request to expressly abandon U.S. Appln. Ser. No. 09/386,591 filed August 31, 1999, which is a continuation of pending U.S. Appln. Ser. No. 08/934,367, which is a continuation-in-part of pending U.S. Appln. Ser. No. 08/785,997, filed January 21, 1997 and a continuation-in-part of pending U.S. Appln. Ser. No. 08/788,882, filed January 21, 1997. Applicants are in receipt of a final Office Action issued in the above-referenced application on March 10, 2003.

REMARKS

Pursuant to 37 C.F.R. 1.138(a), Applicants hereby expressly abandon the present application.

The claims of the present application are directed in general to a method for increasing HDL in the blood by the administration of a DNA vaccine comprising a DNA sequence encoding a portion of a cholesteryl ester transfer protein (CETP).

In the final Office Action issued March 10, 2003, the Examiner maintained rejections affecting all claims. Claims 3-7, 12, 13, 26, 29-30, 32, 34-40, and 42-46, and indirectly Claims 22, 25, 27-28, 31, 33 and 47, were rejected under 35 U.S.C. §103 citing, as the primary reference, Thomas et al., *J. Allergy Clin. Immunol.*, 99(1), S187 (January 24, 1997) for its disclosure of a CETP plasmid-based DNA vaccine.

Specifically, this reference relates to the production of autoantibodies to CETP for the treatment/prevention of atherosclerosis via administration of a plasmid-based DNA vaccine comprising a nucleotide sequence encoding CETP peptides linked to an antigenic tetanus toxoid carrier and a promoter/enhancer for controlling expression of the sequence. Results demonstrated that rabbits injected with the plasmid-based vaccine developed anti-CETP autoantibodies which, in turn, controlled the activity of CETP *in vivo* and led to reduced aortic atherosclerotic lesions than in non-vaccinated rabbits.

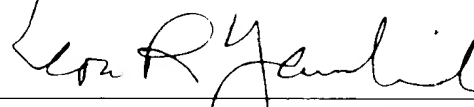
The disclosure of this primary reference is related to Thomas, U.S. Pat. No. 6,284,533 ("the '533 patent") (enclosed) which claims priority to U.S. Provisional Appln. No. 60/052,983, filed May 1, 1996. That priority application demonstrates construction and use of the same plasmid vaccine as the above-referenced Thomas et al. publication at least as early as May 1, 1996. The plasmid vaccine is used to inoculate mammalian subjects to elicit anti-CETP antibodies for the purpose, e.g., of raising HDL level relative to LDL.

In view of the subject matter disclosed in and encompassed by the '533 patent and its priority document, Applicants elect not to address the rejections set forth in the Office Action issued March 10, 2003. Therefore, pursuant to 37 C.F.R. §1.138, Applicants hereby expressly abandon U.S. Appln. Ser. No. 09/386,591. This express abandonment relates to the present application only, and is not directed to any of the above-referenced pending predecessor applications.

In accordance with 37 C.F.R. §1.138(b) and pursuant to 37 C.F.R. §1.33(b)(1), the undersigned is authorized to submit this express abandonment.

The Commissioner is hereby authorized to charge any fees associated with the filing of this paper to Deposit Account No. 50-0268.

Respectfully submitted,



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